

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

SERVPRO INTELLECTUAL
PROPERTY, INC. and SERVPRO
INDUSTRIES, INC.

Case No. 16-cv-00045

Plaintiffs

COMPLAINT

v.

DAN SCHMIDT and NUMARK
CONSTRUCTION, INC. dba
NUMARK RESTORATION

JURY TRIAL DEMANDED

Defendants

COMPLAINT

Servpro Intellectual Property, Inc. and Servpro Industries, Inc. (collectively “Servpro”) file this complaint for trademark infringement, unfair competition and deceptive trade practices against Dan Schmidt (“Schmidt”) and NuMark Construction, Inc. dba NuMark Restoration (“NuMark”) (collectively “Defendants”) and state as follows:

I. PARTIES

1. Servpro Intellectual Property, Inc. and Servpro Industries, Inc. both have their principal place of business at 801 Industrial Boulevard, Gallatin, Tennessee 37066.
2. Upon information and belief, Schmidt is a resident of the state of Minnesota having an office at 315 S Walnut Street, Suite 30, Belle Plaine, Minnesota 56011.
3. Numark Restoration has an office, according to the Secretary of State’s

website, at 315 S Walnut Street, Suite 30, Belle Plaine, Minnesota 56011. Upon information and belief, Schmidt is the active agent behind the acts of, by or on behalf of NuMark.

4. Schmidt and NuMark Restoration are the listed owners of the following domain names herein referenced as the "Infringing Domain Names":

- (1) www.serveprodetroitlakes.com
- (2) www.servproafton.com
- (3) www.servproaitkin.com
- (4) www.servproalbertlea.com
- (5) www.albertville.com
- (6) www.servproandover.com
- (7) www.servproannandale.com
- (8) www.servproanoka.com
- (9) www.servproapplevalley.com
- (10) www.servproardenhills.com
- (11) www.servprobarnesville.com
- (12) www.servprobaxter.com
- (13) www.servprobayport.com
- (14) www.servprobecker.com
- (15) www.servprobelleplaine.com
- (16) www.servprobemidji.com
- (17) www.servprobenson.com

- (18) www.servprobigrake.com
- (19) www.servproblaine.com
- (20) www.servprobloomington.com
- (21) www.servproblueearth.com
- (22) www.servprobrahams.com
- (23) www.servprobainerd.com
- (24) www.servprobreckenridge.com
- (25) www.servprobreezypoint.com
- (26) www.servprobuffalo.com
- (27) www.servproburnsville.com
- (28) www.servprobryon.com
- (29) www.caledonia.com
- (30) www.servprocambridge.com
- (31) www.servprocanyonby.com
- (32) www.servprocannonfalls.com
- (33) www.servprocarver.com
- (34) www.servprocenterville.com
- (35) www.servprochamplin.com
- (36) www.servprochanhassen.com
- (37) www.servprochaska.com

- (38) www.servprochatfield.com
- (39) www.servprochisagocity.com
- (40) www.servprochisholm.com
- (41) www.servprocirclepines.com
- (42) www.servproclearwater.com
- (43) www.servprocloquet.com
- (44) www.servprocohasset.com
- (45) www.servprocoldspring.com
- (46) www.servprocoleraine.com
- (47) www.columbiaheights.com
- (48) www.servprocoonrapids.com
- (49) www.servprocorcoran.com
- (50) www.servprocottagegrove.com
- (51) www.servprocrookston.com
- (52) www.servprocrosby.com
- (53) www.servprocrosslake.com
- (54) www.servprocystal.com
- (55) www.servprodayton.com
- (56) www.servprodeephaven.com
- (57) www.servprodelano.com
- (58) www.servprodilworth.com

- (59) www.servprododgecenter.com
- (60) www.servproeagan.com
- (61) www.servproeaglelake.com
- (62) www.servproeastbethel.com
- (63) www.servproeastgrandforks.com
- (64) www.servproedenprairie.com
- (65) www.servproedina.com
- (66) www.servproelknewmarket.com
- (67) www.servproelkriver.com
- (68) www.servproely.com
- (69) www.servproeveleth.com
- (70) www.servproexelsior.com
- (71) www.servproeyota.com
- (72) www.servprofairmont.com
- (73) www.servprofalconheights.com
- (74) www.servprofaribault.com
- (75) www.servprofarmington.com
- (76) www.servprofergusfalls.com
- (77) www.servproforestlake.com
- (78) www.servprofridley.com

- (79) www.servprogaylord.com
- (80) www.servproglencoe.com
- (81) www.servprogoldenvalley.com
- (82) www.servprogoodview.com
- (83) www.servprograndrapids.com
- (84) www.servprogranitefalls.com
- (85) www.servprogrant.com
- (86) www.servprogreenfield.com
- (87) www.servprohamlake.com
- (88) www.servprohastings.com
- (89) www.servprohawley.com
- (90) www.servprohermantown.com
- (91) www.servprohibbing.com
- (92) www.servprohinckley.com
- (93) www.servprohopkins.com
- (94) www.howardlake.com
- (95) www.servprohoytlakes.com
- (96) www.servprohugo.com
- (97) www.servprohutchinson.com
- (98) www.servproindependence.com
- (99) www.servprointernationalfalls.com

- (100) www.servproinvergroveheights.com
- (101) www.servproisanti.com
- (102) www.servprojanesville.com
- (103) www.serprojordan.com
- (104) www.servprokasson.com
- (105) www.servprokenyon.com
- (106) www.servprolacrescent.com
- (107) www.servprolakacity.com
- (108) www.servprolakecrystal.com
- (109) www.servprolakeelmo.com
- (110) www.servprolakefield.com
- (111) www.servprolakeville.com
- (112) www.proservlauderdale.com
- (113) www.proservlauderdale.com
- (114) www.servprolesterprairie.com
- (115) www.servprolesueur.com
- (116) www.servprolindstrom.com
- (117) www.servprolinolakes.com
- (118) www.servprolitchfield.com
- (119) www.servprolittlecanada.com

- (120) www.servprolittlefalls.com
- (121) www.servprolonglake.com
- (122) www.servprolongprairie.com
- (123) www.servprolonsdale.com
- (124) www.servproluverne.com
- (125) www.servpromadelia.com
- (126) www.servpromahtomedi.com
- (127) www.servpromankato.com
- (128) www.servpromapplegrove.com
- (129) www.servpromappleplain.com
- (130) www.servpromappleton.com
- (131) www.servpromapplewood.com
- (132) www.servpromayer.com
- (133) www.servpromedina.com
- (134) www.servpromelrose.com
- (135) www.servpromendotaheights.com
- (136) www.servpromilaca.com
- (137) www.servprominneapolis.com
- (138) www.servprominnetrista.com
- (139) www.servpromontevideo.com
- (140) www.servpromonticello.com

- (141) www.servpromontrose.com
- (142) www.servpromooselake.com
- (143) www.servpromora.com
- (144) www.servpromorris.com
- (145) www.servpromound.com
- (146) www.servpromoundsview.com
- (147) www.servpromountainiron.com
- (148) www.servpromountainlake.com
- (149) www.servprompls.com
- (150) www.servproonewbrighton.com
- (151) www.servpronewhope.com
- (152) www.servpronewport.com
- (153) www.servpronewprague.com
- (154) www.servproonewulm.com
- (155) www.servpronisswa.com
- (156) www.servpronorthbranch.com
- (157) www.servpronorthfield.com
- (158) www.servpronorthnamkato.com
- (159) www.servpronorthoaks.com
- (160) www.servpronorthstpaul.com

- (161) www.servpronorwoodyoungamerica.com
- (162) www.servpronowthen.com
- (163) www.servprooakdale.com
- (164) www.servprooakgrove.com
- (165) www.servprooakparkheights.com
- (166) www.servproolivia.com
- (167) www.servproorono.com
- (168) www.servproortontonville.com
- (169) www.servproosakis.com
- (170) www.servproosseo.com
- (171) www.servprootsego.com
- (172) www.servproowatonna.com
- (173) www.servproparkrapids.com
- (174) www.servpropaynesville.com
- (175) www.servpropelicanrapds.com
- (176) www.servproequatlakes.com
- (177) www.servproperham.com
- (178) www.servproppinecity.com
- (179) www.servpropineisland.com
- (180) www.servpropipestone.com
- (181) www.servproprinceton.com

- (182) www.servpropriolake.com
- (183) www.servproproctor.com
- (184) www.servproramsey.com
- (185) www.servproredwing.com
- (186) www.servproredwoodfalls.com
- (187) www.servprorichfield.com
- (188) www.servprorobbinsdale.com
- (189) www.servprorogers.com
- (190) www.servproroseau.com
- (191) www.servprorosemount.com
- (192) www.servproroseville.com
- (193) www.servprorushcity.com
- (194) www.servprorushford.com
- (195) www.servprosaintcloud.com
- (196) www.servprosaintpaul.com
- (197) www.servprosandstone.com
- (198) www.servprosartell.com
- (199) www.servprosaukcentre.com
- (200) www.servprosaukrapids.com
- (201) www.servproscandia.com

- (202) www.servproshakopee.com
- (203) www.servproshoreview.com
- (204) www.servproshorewood.com
- (205) www.servprosilverbay.com
- (206) www.servproslayton.com
- (207) www.servprosleepyeye.com
- (208) www.servprosouthstpaul.com
- (209) www.servprospringlake.com
- (210) www.servprospringlakepark.com
- (211) www.servprostanthony.com (redirects)
- (212) www.servprostaples.com
- (213) www.servprostaugusta.com
- (214) www.servprostbonifacius.com
- (215) www.servprostewartsville.com
- (216) www.servprostfrancis.com
- (217) www.servprostillwater.com
- (218) www.servprostjames.com
- (219) www.servprostlouisspark.com
- (220) www.servprostmichael.com
- (221) www.servprostpaul.com
- (222) www.servprostpaulpark.com

- (223) www.servprostpeter.com
- (224) www.servprothiefriverfalls.com
- (225) www.servprotwoharbors.com
- (226) www.servprovadnaisheights.com
- (227) www.servprovirginia.com
- (228) www.servprowabasha.com
- (229) www.servprowaconia.com
- (230) www.servprowadena.com (redirects)
- (231) www.servprowaitepark.com
- (232) www.servprowarroad.com
- (233) www.servprowaseca.com
- (234) www.servprowaterville.com
- (235) www.servprowayzata.com
- (236) www.servprowells.com
- (237) www.servproweststpaul.com
- (238) www.servprowhitebearlake.com
- (239) www.servprowillmar.com
- (240) www.servprowindom.com
- (241) www.servprowinona.com
- (242) www.servprowinstead.com

(243) www.servproworthington.com

(244) www.servprowyoming.com

(245) www.servprozimmerman.com

(246) www.servprozumbrota.com

5. One or more of the domain names listed in Paragraph 4 above redirect to the website location at www.servicerestoration.com ("NuMark Website").

II. BACKGROUND

6. In business since 1967, Servpro Industries, Inc. is one of the world's largest providers of cleanup and restoration products and services.

7. Servpro Industries, Inc. has more than 1500 franchisees operating nationwide.

8. Since 1967, Servpro Industries, Inc. and its franchisees have delivered goods and services under the "SERVPRO" mark to customers.

9. Servpro Industries, Inc. and its franchisees have spent millions of dollars in promoting the "SERVPRO" trademark and consumers have purchased billions of dollars of "SERVPRO" goods and services.

10. Servpro Intellectual Property, Inc. is the owner of many trademarks and trademark registrations for "SERVPRO" variants and derivatives (hereinafter "SERVPRO TRADEMARKS"), more specifically:

a. Servpro Intellectual Property, Inc. is the owner of U.S. Trademark Registration No. 1,845,906 (Exhibit 1 hereto) in connection with "carpet, furniture and drapery cleaning

services, services for the restoration of structures and/or contents damaged by fire, water and other catastrophes both indoors and outdoors" for the trademark "SERVPRO";

b. Servpro Intellectual Property, Inc. is the owner of U.S. Trademark Registration No. 3,361,893 (Exhibit 2 hereto) in connection with "mold remediation services" for the trademark "SERVPRO";

c. Servpro Intellectual Property, Inc. is the owner of U.S. Trademark Registration No. 1,707,245 (Exhibit 3 hereto) in connection with "cleaning, painting and repairing services in homes, offices and other buildings" for the following mark:



d. Servpro Intellectual Property, Inc. is the owner of U.S. Trademark Registration No. 1,726,156 (Exhibit 4 hereto) in connection with "franchising services; namely, offering assistance in the establishment and/or operation of businesses dealing with cleaning and damage restoration to structures and/or contents" for the following mark:



e. Servpro Intellectual Property, Inc. is the owner of U.S. Trademark Registration No. 1,804,022 (Exhibit 5 hereto) in connection with various cleaning products and equipment for the following mark:



11. Servpro Industries, Inc. is the exclusive licensee of the SERVPRO TRADEMARKS and has extensively used the SERVPRO TRADEMARKS nationally.

12. Servpro Industries, Inc. and its franchisees have expended millions of dollars promoting the SERVPRO TRADEMARKS.

13. As a result of this extensive use and promotion of the SERVPRO TRADEMARKS, Servpro has developed significant and extensive good will in the SERVPRO TRADEMARKS.

14. As a result, the SERVPRO TRADEMARKS are famous throughout the United States.

15. Services provided by Servpro include fire damage, water damage, smoke damage, and plumbing damage.

16. NuMark services include fire damage, water damage, smoke damage, and plumbing damage.

17. NuMark provides its fire damage, water damage, smoke damage, and plumbing damage serviced under the NuMark Website that is redirected from the Infringing Domain Names.

18. As a result of Defendants' actions, consumers are being and/or likely to be confused.

III. JURISDICTION AND VENUE

19. Subject matter jurisdiction for the trademark infringement and unfair competition claims exists with respect to the claims asserted in this Complaint pursuant to 28 U.S.C. §§ 1331 and 1338.

20. Venue is proper in this Court in accordance with 28 U.S.C. § 1391.

IV. PERSONAL JURISDICTION

21. The Court has personal jurisdiction over Defendants because Defendants engage in “business” in Minnesota and reside in Minnesota.

22. Further, the acts complained of herein occurred primarily in Minnesota.

23. Similarly, the exercise of personal jurisdiction over Defendants comports with due process requirements of the United States Constitution because: (a) Defendants have purposefully established “minimum contacts” with the State of Minnesota, and (b) the exercise of personal jurisdiction over Defendants will not offend the traditional notions of fair play and substantial justice. Therefore, this Court has specific and general jurisdiction over Defendants.

V. CAUSES OF ACTION

Count I - Trademark Infringement

24. Servpro realleges and incorporates by reference each of the numbered paragraphs above as if fully set forth herein.

25. By offering its services on a NuMark Website to which traffic is directed from the Infringing Domain Names, Defendants are using the SERVPRO TRADEMARKS in a manner likely to create confusion among the consuming public as to source, origin, sponsorship, and/or affiliation.

26. NuMark's actions, including those of using the SERVPRO TRADEMARKS and the Infringing Domain Names, are controlled by Schmidt serving as active agent.

27. Defendants' conduct relating to the use of the SERVPRO TRADEMARKS is without the permission of Servpro.

28. Defendants' actions, done with full knowledge of the SERVPRO TRADEMARKS, are creating actual confusion and are likely to create other confusion as to source, origin, sponsorship, or affiliation.

29. Defendants are thus in violation of 15 U.S.C. § 1114 regarding the SERVPRO TRADEMARKS and of 15 U.S.C. § 1125(a) regarding all of SERVPRO's TRADEMARKS.

30. Such acts by Defendants cause Servpro irreparable harm as to which Servpro is entitled to a temporary restraining order, preliminary injunction, and permanent injunction under 15 U.S.C. §1116. Such acts further cause harm to Servpro as to which Servpro is entitled to recover actual damages as well as the costs of any necessary corrective advertising. Given that Defendants' conduct is willful, Servpro is entitled to an accounting of profits, attorneys' fees, and multiplied damages.

Count II - Unfair Competition

31. Servpro realleges and incorporates by reference each of the numbered

paragraphs above as if fully set forth herein.

32. Defendants have no right to use the SERVPRO TRADEMARKS in connection with their goods or services, yet Defendants have passed off their services to the public as if they are the goods or services of Servpro.

33. Defendants have acted with an intent to deceive the public as to the source of their goods and services, and the public has, in fact, been confused or deceived as to the true source of Defendants' goods and services and their rights and authority regarding the SERVPRO TRADEMARKS.

34. Defendants' unlawful usurpation of Servpro's rights and property constitutes unfair competition under the common law of Minnesota.

Count III – Cyber Piracy

35. Servpro realleges and incorporates by reference each of the numbered paragraphs above as if fully set forth herein.

36. Defendants, in using and registering the Infringing Domain Names, intend to profit from Servpro's trademarks that were registered and distinctive at the time of Defendants' registration of the domains.

37. Defendants' actions constitute bad faith intent under 15 U.S.C § 1125.

38. Defendants' actions constitute cyber-piracy under 15 U.S.C § 1125.

WHEREFORE, Servpro respectfully prays that this Court grant the following relief:

A. That the Court enter injunctive relief, ordering that Defendants, as well as its

officers, agents, servants, employees, attorneys and all others in active concert or participation with them, are enjoined and restrained from:

1. Engaging in any conduct that infringes the SERVPRO TRADEMARKS;
2. Offering any goods or services using any mark containing the SERVPRO TRADEMARKS;
3. Engaging in any advertising that tends in a false or misleading manner to associate the Defendants' goods or services with Servpro or with Servpro's goods or services;
4. Engaging in any advertising that tends to adversely affect the public's perception of Servpro or Servpro's goods or services; and
5. Using and/or registering any domain name that includes SERVPRO and/or any term likely to create confusion with SERVPRO and/or any of Servpro's trademarks.

B. That the Court enter preliminary and permanent injunctive relief ordering Defendants, in accordance with 15 U.S.C. § 1116, to file a verified report with this Court within thirty (30) days of the Court's entry of the order for injunctive relief, specifying in detail the manner and form in which Defendants have complied with the injunction and order of this Court.

C. That the Court award Servpro damages, an accounting of profits, and attorneys' fees and costs;

D. That the Court award Servpro multiplied damages because of Defendants' willful wrongful conduct;

E. That the Court order Defendants to assign the NuMark Domain and the infringing Domain Names to Servpro.

F. A trial by jury as to all issues; and

G. That the Court award such further relief as is merited under law and equity.

Dated: January 8, 2016.

/s/Sybil L. Dunlop
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